IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 23 of 2005

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DAMODAR B MOTIYANI

Versus

VASANTLAL LALJI

Appearance:

1. Civil Revision Application No. 23 of 2005

MR SURESH M SHAH for Petitioner

MR MB GANDHI for Respondents

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 27/04/2005

ORAL JUDGEMENT

Heard the learned advocates.

Feeling aggrieved by the judgment and order dated 30th October, 2004 passed by the learned Joint District Judge, Jamnagar in Regular Civil Appeal No. 54 of 2004, the appellant, defendant in Regular Civil Suit No.424 of 1999 has preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

The plaintiffs are the owners of the suit shop. The suit shop was leased to the defendant for a monthly rent of Rs. 150/= under the Rent Note dated 6th November, 1985 [Exh.16]. The plaintiffs instituted above referred Regular Civil Suit No. 424 of 1999 for a decree for eviction on the ground that the defendant had failed to carry on the business in the suit shop and had kept the suit shop closed for a period of more than six months. The suit was contested by the defendant. The defendant filed written statement Exh. 8 and denied the allegations made by the plaintiffs. The plaintiffs led oral as well as documentary evidence to prove that the suit shop was closed since the month of March, 1999. The plaintiffs examined the officer of the Gujarat Electricity Board who produced the ledger entry [Exh. 31] maintained by the Gujarat Electricity Board to show that since 1st March, 1999 electrical consumption was not recorded as the suit shop was closed; and that the defendant had not paid the amount of periodical electricity bills raised by the Gujarat Electricity Board. The plaintiffs also examined occupant of the adjoining shop. He deposed that the suit shop was closed throughout the relevant period. The defendant examined himself and stated that he used to do business in the suit shop for one and half hour in the afternoon and used to sale Pan-pattar to the pan shop owners. He also examined certain witnesses. All of whom deposed that they used to buy pan pattar from the defendant in the afternoon.

Considering the above evidence, both the Courts below have held that the defendant had improved his case in oral evidence, though in his pleadings he had not stated anything about the limited hours during which he did business in the suit shop. Both the courts below have taken a view that the defendent did put the suit shop to non-use during the relevant period. The plaintiffs were, therefore, entitled to a decree for eviction under Section 13 [1](k) of the Rent Act.

Mr. Shah has submitted that the Courts below

have erred in relying on the only documentary evidence i.e. the ledger entries maintained by the Gujarat Electricity Board. He has submitted that the defendant was doing business for one and half hour in the afternoon, obviously, the meter reader would not find the suit shop open at any other time he might have visited the suit shop. Besides, there would not be any electric consumption in the afternoon. He has submitted that the evidence of the witnesses examined by the defendant was natural. They being the buyers of the defendant were the only persons who could have deposed about the business of the defendant.

I see no substance in this Revision Application. As recorded hereinabove, both the Courts below have recorded concurrent finding against the defendant. The view taken by the Courts below is neither pererse nor erroneous. Even if second view on the evidence on record is possible, this Court, exercising revisional jurisdiction under Section 29 (2) of the Rent Act, would not substitute the finding recorded by the Courts below by its own.

No other contention is raised before me. The Revision Application is dismissed in limine. Notice is discharged. Ad interim relief is vacated.

At the request of learned advocate Mr. Shah, the ad interim relief shall stand continued till 30th July, 2005 on usual terms and on condition that the petitioner shall, commencing from 1st April, 2005 pay occupancy fee of Rs.500/= to the respondents. Such occupancy fee shall be paid by the 10th day of the succeeding month.

{Miss R.M Doshit, J.}

Prakash*